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# *American Consular Service*

By ELI T. SHEPPARD

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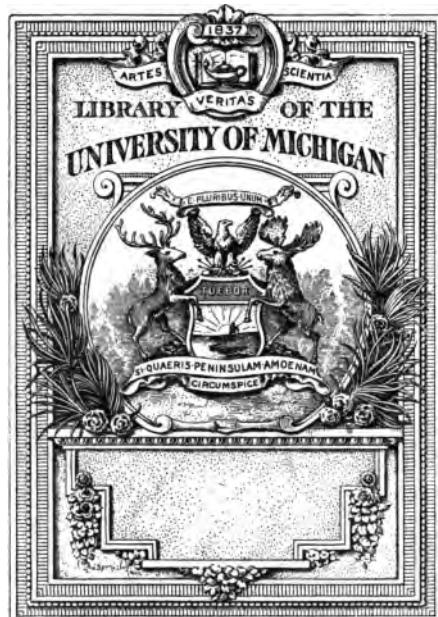
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## AMERICAN CONSULAR SERVICE.\*

By ELI T. SHEPPARD.

### ORIGIN, HISTORY, AND NATURE OF CONSULAR ESTABLISHMENTS.

The consular and diplomatic service of the United States, like that of other nations, stands apart and differs in a most important particular, in respect to its character, from all the other administrative agencies of the government.

From the very nature of their employment, and the character of their official duties, consular and diplomatic representatives come within the general notice and under the special protection of the law of nations. This fact alone, independent of the vital and delicate interests confided to their care, gives to such officers a peculiar standing and dignity in the eyes of their countrymen and of the world.

Consular and diplomatic officers are still further distinguished and marked out from those of every other branch of the national civil service by the fact that all their fundamental rights, privileges, and powers as public agents of the nation which they represent depend primarily upon the principles of international law and the usage and customs of nations. By long established practice common among civilized nations, these officers are everywhere recognized as coming within the purview of public law and as forming a definite factor in the economy of the world.

\* Lectures delivered before the students of the College of Commerce of the University of California in March, 1901.

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When the United States became a separate and independent power and entered the great circle or family of nations, it inherited, so to speak, the consular and diplomatic system of the old world, as a kind of birthright from the civilization of Europe.

Our government has always recognized this important fact, and has maintained from the beginning of its intercourse with foreign nations that our consuls especially have certain rights and privileges coming to them from the common law of nations; though subject, of course, to abridgement by Congress and to enlargement by treaties.

The Constitutional Convention at Philadelphia in framing the organic law of the Republic, recognized consuls as existing officers under the law of nations, and carefully provided that original jurisdiction over all cases affecting foreign ambassadors and consuls should be vested exclusively in the Supreme Court of the United States.

"Considering the importance of the consular functions," says Chancellor Kent, "and the activity required of them at all the important maritime ports, and the approach which consuls make to the dignity of diplomatic characters, it was a wise provision of the Constitution which took the jurisdiction over them out of the State courts, and vested it exclusively in the supreme tribunal of the nation."

When we consider the number of such officers, and the important and delicate functions which they perform, it is not too much to say that they constitute by far the most useful and important part of the machinery by which our intercourse with the world is maintained. Deputed to watch over the commercial interests of the nation, and entrusted with the duty of protecting and defending the individual rights of our citizens in foreign lands, our consular officers are preëminently the representatives of American character and manners.

Scattered throughout the whole world, and occupying an eminent social position in all the official and commercial circles of different countries, and performing duties which

bring them into close contact with all classes of the people among whom they reside, the influence and utility of our consular representatives are even more important than those of the higher class of foreign agents who are more strictly styled the Diplomatic Corps. To a nation essentially commercial, like the United States, there is no administrative agency of the government more useful or more important than the consular service, not only as a means of conducting our foreign affairs, but as an agency for the protection and promotion of foreign commerce. Consuls are the commissioned sentinels of the nation, stationed at every outpost of the world for the purposes of commercial observation as well as of civil authority.

In a country with a changing civil service like ours, it is of the highest importance for every young man to acquire a knowledge, not only of the fundamental principles of the commercial policy of the nation, but also to acquaint himself with the duties and functions of its consular and diplomatic representatives. A knowledge of the history, nature, and functions of this branch of the civil service is not only desirable as forming no small part of a liberal education, but is absolutely essential for anyone who expects to engage successfully in wide commercial operations, or who hopes to enter the foreign service of the country. Every young man, to be sure, may not enter or even desire to enter the consular or diplomatic service, but everyone can and should qualify himself, not only that he may exercise an intelligent influence as a citizen in shaping the foreign policy of the nation, but that he may be suitably equipped to discharge with credit to himself and to his country those positions of public trust which it may be his duty as a citizen to fulfil in after years.

It is generally considered, by those who have made the subject a special study, that a preparatory course of reading for students or members of the consular and diplomatic service should embrace, at least, an outline history of the origin and early development of consular institutions. The

student who would understand the modern consular systems of the world should know something of the early commercial institutions and maritime usages of Europe, because it was in the commercial and maritime institutions, laws and usages of Europe during the Middle Ages that all the fundamental rights, privileges, and functions of consuls in modern times had their origin. The germs of nearly all the principles of maritime and commercial law, and of many of the ideas which cluster around the modern system of international law, had their early development, if not their origin, in the customs and usages of the maritime and commercial states of mediaeval Europe.

The practice of maintaining consular agents at foreign ports and cities for the protection of commerce, navigation, and trade, dates back to the very beginning of modern civilization. Consular institutions closely resembling those of modern times were common throughout Europe centuries before the practice had become common of maintaining permanent diplomatic agents abroad.

From the eleventh until the fifteenth century, consular officers in Europe, in addition to their ordinary duties of a commercial character, performed many of the functions and enjoyed many of the rights, privileges, and immunities of modern diplomatic representatives.

The consular system, it may be said, was the beginning of the diplomatic service. International law—the code of diplomacy—was as yet in the formative stage of development, and the consul of that early age was like one crying in the wilderness,—the forerunner of the diplomatist who was to come after him.

While it would be exceedingly difficult, perhaps impossible, to trace the origin or give an accurate account of the development of consular jurisdiction as it existed in Europe in the Middle Ages, it seems certain that consular institutions in a rudimentary form have existed among commercial nations from the earliest times.

It is rather surprising that the public libraries of

Europe, where consular institutions had their origin and early development, contain but three or four books which profess to give even an outline of their history. This seems all the more surprising when we remember that the consular system is coeval with modern commerce, and that consular institutions have exercised a prodigious influence on the political and economic conditions of Europe for nearly ten centuries. Even so thorough and so thoughtful a writer as Gibbon passes over the subject, in his *Decline and Fall of the Roman Empire*, with a few brief paragraphs. It is not so surprising, however, that ancient writers should have overlooked the subject, especially when we remember that Cicero, the greatest orator and advocate of the Roman Empire, believed that the subject of commerce was unworthy the study and beneath the dignity of the conquerors of the world, and that Plato, the first philosopher and political writer of Greece, declared that commerce would work the ruin of Hellenic civilization.

The sneering remark of Napoleon that "the English were a nation of shopkeepers," was only a feeble echo of the barbarian maxim of the conquering Romans, who despised the occupation of a merchant.

The advantages of some kind of magistracy for the settlement of mercantile and marine disputes seem, nevertheless, to have been obvious to the ancient Greeks and Romans. Even in the most primitive ages the operations of foreign commerce, particularly in maritime cities and ports, were liable to involve national interests as well as the individual interests of merchants and traders. Not only the disputes of foreign merchants, but especially the presence of foreign vessels and seamen in the ports and harbors of marine cities must have rendered necessary the presence and authority of a magistrate of some sort, to settle their disputes and preserve public order.

History informs us that the ancient Egyptians, the Chinese of antiquity, permitted maritime and commercial disputes with foreign traders to be decided by a high priest

in a temple at Memphis and other cities, dedicated to their gods for that purpose. When the Greek or Phoenician merchant trader bought corn from an Egyptian, and either the corn was not up to sample, or the foreigner refused to pay the price agreed upon, the parties were summoned before the high priest in the temple of justice, who decided the case, and took a portion of the corn for his judicial services.

Eight hundred years later, at Athens and other Greek cities, officers were elected or appointed who were instructed by a decree of the people to entertain strangers and perform the functions of magistrates in the settlement of disputes with foreign merchants, and for keeping foreign sailors in order.

It was the custom of the Greek states from the earliest times to enter into treaties with one another, determining the principles of law which they would mutually observe and enforce in favor of one another, and the mode in which a citizen of either state might plead and obtain his rights in the courts of the other. For this purpose each state elected agents, called proxeni, a kind of consuls, who resided in the ports of the other.

From one of the orations of Demosthenes we learn that these officers held their court on board the foreign vessel in port, and "decided the disputes of sailors and merchants in a summary manner, according to their own confessions and the testimony of witnesses"; and also that another class of officers were the supreme judges of all mercantile and maritime disputes.

Like the consuls of modern times, the Greek proxenus at Athens and other towns was permitted to affix above the outer door of his official residence the coat of arms of the town or city in which he exercised the duties of his office.

Plutarch gives an interesting account of the manner in which Alcibiades, while acting in this capacity as the public host of the Lacedemonians, and while he had charge of the prisoners taken at Sylos, availed himself of the privilege of his office to revenge himself upon the Athenians.

Herodotus, the father of history, in his account of Teos, the birthplace of Anacreon, gives a detailed account of the maritime magistracy of that place and of the jurisdiction which it exercised over foreign commerce four centuries before the Christian era.

Plutarch also mentions the existence of a species of magistrates in the Macedonian ports, on the Adriatic Gulf, five hundred years before the Christian era, named "*Polites*," who were entrusted with the regulation of the commerce of those cities with the Illyrians, a neighboring nation of traders.

From a number of facts recorded in history, the inference is plain that although many of the ancient maritime nations were ignorant of or hostile to the principles of maritime justice, there existed amongst some of them at least a well defined system of consular jurisdiction very similar to that of later times. In every instance, however, of which there is any authentic account, the officer exercising such authority was a native of the place or port where he resided, and not of the country of the foreign merchant.

The notable exceptions to the rule were the ancient Phoenicians and Carthaginians, who owed their supremacy and glory to maritime commerce, and who permitted no foreign vessels or traders to visit their ports, under penalty of death.

The Carthaginians were the corsairs or pirates of the Mediterranean from the beginning of their history, just as their descendants, the natives of Tunis and Tripoli, were when Commodore Decatur made his brilliant descent upon them in 1815, and put an end to their piratical depredations on American commerce.

The Republic of Rhodes was the first nation of antiquity to establish a humane and liberal code of maritime laws. The Republic or city of Rhodes is associated in the popular mind generally with the colossal bronze statue which was so long erroneously represented as bestriding the entrance to the harbor of that ancient seat of commerce

and oratory. Its greatest monument and its chief interest for us, however, was its celebrated maritime code, which was adopted during the reign of Augustus as a part of the maritime laws of Rome, and was afterwards incorporated into the Pandects of Justinian. Seven centuries after the reign of Augustus this celebrated code reappeared in the maritime laws of the Republic of Amalphi. The historian Hume, in his account of Richard III, states that no event in the middle ages tended so much to the improvement of maritime usages as the accidental discovery of these laws in the Tables of Amalphi.

Although the ancient Romans, as Cicero tells us, regarded the business of a merchant as altogether beneath the dignity of the masters of the world, they were far too sensible a people to underrate the value of foreign commerce; on the contrary, we have the testimony of Cicero himself to the fact that the city of Corinth was destroyed by a Roman general for having wantonly ill-treated a simple Roman citizen who had been sent there in the interest of commerce.

Nearly all that we know definitely, however, concerning the commercial institutions of the Romans is that, like the Greeks before them, they had commercial magistrates who decided the disputes of merchants and sailors in the cabins of vessels.

The title of *consul* itself is derived from the Romans. As every one knows, the name *consul* (which is not to be confounded with *counsel*) was originally employed to designate the office of the first magistrates of Rome. After it ceased to distinguish the chief magistrates of Rome it was adopted by the maritime cities and republics of the Mediterranean as the title of their maritime judges. These early judges or consuls had no special concern with foreign commerce; they were simply local municipal officers. Later on, as commercial intercourse between the various cities of the Mediterranean increased, it became the practice for vessels on long voyages, some of which occupied a period

of two or three years, to carry a magistrate on board, whose duty it was to administer the law among the merchants and sailors on board, not merely while the vessel was at sea, but also while she was lying in foreign ports loading or unloading cargo. This officer was designated by the familiar name of consul, and was the precursor of the resident commercial consul of our day.

No better name could have been devised at that age of the world. It indicated a magistrate of the highest authority, and gave to the person holding the office a standing and dignity in the eyes of the world well suited to the importance of the office.

At that early period of commercial intercourse, the merchant ships of all nations were held to be navigated under the jurisdiction of the nation whose flag they carried, and while lying in the waters and harbors of a foreign country they also enjoyed as complete exemption from the local territorial jurisdiction as though they were on the high seas, or within the harbors of their own country.

The same was true also of the ship's cargo, her crew and passengers. According to the theory of public law at that time, the laws of the nation to which an individual belonged followed him wherever he went, and he was entitled to their protection and benefit without reference to the laws of the territory or country in which he temporarily sojourned.

At the beginning of the tenth century the chief commercial cities of Italy and Spain, bordering on the Mediterranean, had become important centers of navigation and commerce, and occupied much the same position relatively as did the ancient commercial commonwealths of Thebes, Athens, Rhodes, and Corinth some ten centuries before. The whole of Italy was practically divided into the dominions of the various maritime cities of the Mediterranean and Adriatic, such as Amalphi, Genoa, Pisa, and Venice.

These cities formed a group of independent municipalities or republics, something like the free cities of Germany

some three centuries later. They were all essentially commercial, and were practically independent of any other power. Each of them in turn, beginning with Amalphi in the tenth, and ending with Venice in the fourteenth century, rose to a height of maritime and commercial splendor which we at this distance of time can scarcely realize. Macaulay, in speaking of this, says: "The moral and geographical position of the Italian republics enabled them alike to profit by the barbarism of the West, and by the civilization of the East. Their ships covered every sea; their mercantile factories and consulates rose on every shore. No other country of Europe, England excepted, has ever reached so high a point of wealth and commercial power."

We may form some idea of the maritime activities of the Italian republics and the magnitude of the commerce of that period when we remember that during the Second Crusade the Republic of Venice alone possessed a merchant fleet of over three thousand ships in the Mediterranean, employing many thousand sailors, besides a corresponding fleet of war vessels, manned by eleven thousand marines, which patrolled the Mediterranean from the Dardanelles to the Pillars of Hercules. As early as 1170 the Rialto had become the financial and mercantile exchange of Europe, just as London has become at the present time.

Anderson, in his Commercial History of Europe, says that at that time the merchant ships of the Mediterranean thronged the quays and harbors of Venice, Genoa, Pisa, and Marseilles, and that each of these cities maintained magnificent hotels, and mercantile clubs and guilds for the accommodation of the swarms of foreign merchants who flocked to these centers of commerce from all quarters of Europe and Asia Minor.

The extension of commercial intercourse among the Italian cities gave rise to a system of maritime and commercial usages which in the course of time came into general acceptance among them, and were gradually incorporated into their respective municipal laws and ordinances. These

laws, usages, and customs were in course of time collected, classified, and arranged. In other words, they were reduced to a regular code; but by whom, or at what exact period of time they were codified, we do not know. The name by which this celebrated code is known to us historically is the Consulato del Mar,—the Book of the Sea.

The codification of this great body of maritime laws and usages marks distinctly the era or beginning of consular establishments in Europe as they exist to-day, very much as the Peace of Westphalia, at the close of the Thirty Years War in Germany, is said to mark the beginning of modern diplomacy and international law. The code had its origin, undoubtedly, in the earliest practices of merchants and seamen, and was gradually sanctioned by the extending usages and customs of maritime commerce. The Consulato furnishes an eminently instructive illustration of the mode or method of evolution of international law. As before stated, the exact period of its origin is not known. Some suppose that it originated with the Pisans, because of its resemblance to the statutes of that city; others believe that it was the slow and gradual growth of the laws, customs, and usages of all the different maritime and commercial cities of the Mediterranean. All that we know with certainty is that it had been acknowledged and was in force at Pisa, Genoa, Marseilles, Barcelona, and Venice at the beginning of the thirteenth century. It is said that all the laws of neutrality, and of navigation and commerce of Europe and America, as they exist at the present time, have their foundation in the principles, maxims, and usages of the Consulato del Mar. It certainly contains the first clear and definite provisions in all history for the establishment of a foreign consular service.

The first eight chapters of the code are devoted exclusively to a definition of the functions, duties, and privileges of consular officers. It has been said that this fact of itself marks one of the most important eras in the history of commercial intercourse between independent nations. It

recognizes for the first time in the intercourse of nations the principle of consular representation abroad, and sanctions the most important official agency for the protection and promotion of foreign commerce and commercial interests ever devised or adopted by civilized nations. It sanctioned a principle and established a practice which had probably never before been perfectly comprehended or understood.

Previous to the adoption of the Consulato del Mar it had been customary to entrust the functions of the consular office to local magistrates residing at the port or city to which foreigners resorted for the purposes of trade. Under such a system a Roman consul or a Greek proxenus was a Roman or a Greek citizen residing at, and exercising the functions of his office in, his own country, city or town, and not abroad. He was a local municipal officer deputed to watch over the affairs and settle the mercantile and maritime disputes of foreigners and natives alike. Under such a system the consul, proxenus, or other consular officer, by whatever name he was designated, had no interest in foreign affairs, and no concern about the stranger within his gates, except that he was his judge, his advocate, or his proxy.

Under the system inaugurated by the Consulato del Mar, the consul resided abroad, and represented the interests of his country and watched over and protected the rights of his countrymen in a foreign land. He was distinguished from the local or municipal consuls of which we have before spoken in that he was the "consul beyond the sea," the consul of the stranger. Such an officer was not only the representative of the country which sent him abroad, but he was recognized by the nation to which he was sent. His office was, therefore, something more than national in character; it was international; because the officer occupied a recognized relation to both nations, and both nations had a direct interest in his official acts and conduct. To use the language of an old writer, a consul

became a "kind of ambassador, which one nation sends to the maritime ports of another nation, for the purpose of favoring the commercial interests of his own country and to settle the disputes of his countrymen in matters of trade and commerce."

In his different capacities such an officer was called upon to settle, not only the trifling disputes of sailors and of merchant traders, but to act at times in matters of the highest concern; matters on which depends alike the friendship or the hatred of governments.

The most interesting and probably the most authentic historical account of the Consulado del Mar in the English language is that given by Sir Travers Twiss in the supplement to the Admiralty Laws of Great Britain. He states that none of the ancient editions of this celebrated code have survived, and that the oldest edition now in existence,—a copy of which is still preserved in the National Library at Paris,—was published at Barcelona in the Catalan language in 1494, two years after Columbus first sailed for America.

In addition to the general regulations for the government of consuls, the Consulado del Mar also contained a collection of the admiralty and navigation laws, both of war and of merchant vessels; and "a collection of the ancient laws and usages of the sea in respect of freights; of damages to goods shipped; of the wages of mariners; of the public sale of stranded, damaged, or condemned vessels; of jettison; of commissions or bailments to masters and mariners; of wrecks and derelicts on the high seas, or washed on shore, and of all other contracts and matters declared in the usages and customs of the sea."

It is conjectured that the Crusades gave a tremendous impulse to the spread of consular establishments in Europe. These religious wars were largely instrumental in building up and extending the maritime and commercial intercourse of all the Italian cities at that period.

During the early Crusades in the eleventh century, over 300,000 Europeans suddenly forsook their homes to join

the standard of the cross for the subjugation of the Holy Land. The Christian army of the Duke of Lorraine alone counted over 80,000 infantry and 8,000 cavalry. An enormous fleet was necessary for the transportation of such large military expeditions to Palestine. The ships necessary for this purpose were supplied by the maritime cities of the Mediterranean, Pisa, Genoa, Marseilles, and Venice, from motives of gain. No English or German merchant ships had ever entered the Mediterranean at that time.

Rich and powerful as these cities had already become from maritime commerce, they now added enormously to their wealth by the fabulous sums of money which they exacted from the crusading nations of the West, not only for transporting their armies, but also for supplying them with the necessary military supplies and provisions of war. They also demanded and received from the Crusaders, as part of their compensation for these services, a practical monopoly of the trade with the East; and, among other things, they secured the important privilege of establishing permanent commercial and trading factories or depots at the various maritime ports and cities in Asia Minor and the Grecian Archipelago, in Egypt, and in Turkey; in fact, in all the great centers of Asiatic commerce. Not only so, but they also secured the still more important privilege of establishing permanent consulates, and of governing their merchant communities in such places by laws and ordinances of their own creation. By means of the several charters or concessions thus obtained, the Italian republics by the close of the twelfth century had established permanent mercantile communities or trading factories at all the ports and cities of the Levant, under the government of resident consular representatives. These establishments during the thirteenth century were still further extended by treaties, conventions, and capitulations with the Eastern emperors and the sultans of Egypt. These charters and capitulations granted to them the privilege of maintaining a Christian church, a counting house, and consular jurisdiction for the protection

of ships and the foreign merchants residing at each of these different factories or mercantile concessions.

From the chronicles of Pisa and Venice of that time we learn that as early as 1226 consular establishments were permanently maintained at Alexandria, at Aleppo, at Constantinople, and at all the various trading cities or centers of Asia Minor. In one of these old chronicles it is recorded that the consuls of the Italian and Catalan cities held a meeting or congress on one occasion in the historic church of St. Sophia in Constantinople,—for the purpose of formally acknowledging the Consulato del Mar as their common legal maritime and consular code.

Campany, in his history of the maritime laws of Barcelona, gives a copy of the instructions of the municipality of that city, issued in 1381, for the guidance of its consuls at Alexandria in Egypt, and at Damascus and other ports in Asia Minor. Before departure for his post of duty, the consul was required to subscribe a solemn oath of office to faithfully maintain and defend the rights of merchant vessels, and the honor of Catalan merchants and other Christian subjects of the King of Aragon within the jurisdiction of his consulate. He was particularly instructed on no account to let or lend the national factories or storehouses there to any Moor, Jew, or other infidel. He was directed to attend strictly to the disputes of merchants and sailors, and to make suitable visits of ceremony to the sultans and rulers of the country where he resided, and to communicate to such officers promptly all official complaints of his government. On visits of ceremony the consul was to be attended by an official suite, and at least two gentlemen ushers in livery. These early consuls were generally selected from a class of poor but well-educated gentry or noblemen. It was a proverb of that time that every Italian consul was a prince. The office was regarded as of the highest distinction and dignity, and was guarded by the different governments with the utmost jealousy. The consular system in those times was regarded, and justly so, as

the chief corner stone and greatest support of foreign commerce. No man was thought worthy of so important a trust who was not well versed in the principles of maritime and commercial law, the usages of the Law Merchant, and the forms, rules, and precedents of diplomatic negotiation. Indeed, at that time consuls were frequently entrusted with diplomatic duties and functions, as well as with the affairs of commerce; hence it was that those officers were frequently dispatched to their posts of duty in national vessels at the public expense, and were accorded many of the honors, rights and privileges which in modern times are granted only to ambassadors and public ministers.

The number and extent of consular establishments in southern Europe during the twelfth and thirteenth centuries may be inferred from the casual remark of Gibbon, that the Romans at that period of the Middle Ages would doubtless have restored the ancient appellation of consul, to designate their chief magistrates, "had they not disdained a title so promiscuously adopted in the Italian cities, that it has finally settled on the humble station of the agents of commerce in a foreign land."

While the consular establishments and commercial and maritime institutions of the Mediterranean world were in process of development, various institutions of a similar character were at the same time springing up in Northern and Western Europe. The most remarkable of these was that wonderful Confederation of the cities of Germany, commonly known as the Hanseatic League. This powerful maritime and mercantile confederation had its origin in the exigencies of early commerce. Like the Italian cities at an earlier period, many of the commercial cities of Germany had in the twelfth century become practically independent, or free cities, and, like trading towns in all ages of the world, their first impulse was toward a closer commercial union. In those rude times the German mariners had neither chart nor compass to guide their course, and were obliged to creep timidly along the shore to avoid the dangers

of the open seas. They had also to dread the more positive dangers of the Viking Pirates who infested the coasts of Northern Germany, and who regarded the peaceful trader as their lawful prey; just as the corsairs of Tunis and Tripoli did the merchant ships of the Mediterranean. For the purpose of mutual protection and safety, it became the practice for merchant vessels of the different German towns to make their trading voyages together in companies or fleets. The union thus begun on the seas was gradually extended to mercantile operations on shore.

When the German merchant fleets reached a foreign port they frequently found it necessary to remain there for months, and even years. The conditions of trade and commerce made it necessary for the merchants to employ or rent storehouses on shore for the convenience of storing and exchanging their goods, and also suitable quarters to live in. In the course of time, as trade and commerce increased, it became common to establish permanent storehouses at foreign ports; a sort of common depot for the storage and safekeeping of the goods and merchandise of the company. These were called mercantile factories, and formed the central points of the great union or Hansa. Around these factories the German merchants clustered in little communities, by themselves, for the sake of safety and for social reasons, in places or streets set apart for them. In London, for instance, where the Hanseatic factories were established, they occupied the districts now known as Bishopsgate, and later also Billingsgate.

During the twelfth and thirteenth centuries the League established a system of confederated mercantile factories and consulates in more than eighty different cities of Northern and Western Europe, extending from Novgorod and Moscow to Holland, France, and the British Isles.

During all of this period the League enjoyed a corporate constitution. In short, it was a huge mercantile and political corporation, and finally resolved itself into a gigantic commercial trust, and completely monopolized and

controlled the maritime trade of Western and Northern Europe, very much in the same way that the Italian cities monopolized the trade and navigation of the Mediterranean.

Wherever the Hanseatic factories or mercantile settlements became established it was necessary to form some sort of civil government among them; for at that time no such thing as modern international law existed. Foreign settlements were permitted to govern themselves independently of the territorial sovereign as best they could; and in much the same way as the mercantile factories or settlements in the Levant formed consular governments, these Hanseatic merchants organized similar institutions at each of their settlements. The manner in which the Hanseatic League appointed their consular officers and organized these consular governments differed somewhat in detail from that of the Italians, but in all their essential features the system was the same. Instead of selecting the consul from among the gentry and noblemen, the Hanseatic merchants elected one or two of their own numbers to perform the functions and duties of the consular office.

From the thirteenth to the sixteenth century the Hanseatic League was the most powerful mercantile, maritime, and political organization in Northern Europe. It maintained a chain of nearly one hundred consulates for the protection of commerce and trade, extending to all the commercial cities of Northern and Western Europe, from the Baltic to the Rhine. Their system of consular jurisdiction and government was similar to that of the Italian republics in the Mediterranean. Both systems of commercial jurisprudence had many elements in common, and it is believed that the admiralty laws and consular institutions of both were formed on the same common model. Taken together, the two systems may be said to constitute the historic background, and to have supplied all the fundamental principles of the modern consular systems of the world.

From a charter still in existence, granted in 1404, King Henry IV secured for British subjects the rights of consular

representation and protection in all the Hanseatic cities in Germany. Thirty-four years later a treaty was negotiated between King Henry VI and the consuls of the Teutonic Hansa, "renewing all the English consular privileges for one hundred years backwards, in commercial and nautical affairs"; and fully confirming the authority of British consuls to "do justice between the King's liege subjects and merchants at all the Hanseatic towns beyond the sea."

One of the most interesting facts in connection with consular history is, that by the terms of the English treaty of 1438 it was agreed that thereafter the laws and ordinances of the Consulato del Mar should be strictly observed in all matters pertaining to consular jurisdiction at the Hanseatic ports.

In 1485, while Christopher Columbus was probably supplicating the court of Ferdinand and Isabella for ships and money for his voyage of discovery, Richard III of England commissioned Lorenzo Strozzi, a Florentine merchant, as British consul at Pisa. This commission, which is now 416 years old, is still preserved in the archives of the British Foreign Office in London, and is believed to be the oldest original copy of any consular commission in existence. It is written in Latin, and was signed by that unhappy king only a few months before he fell on Bosworth Field. It grants to the consul, in lieu of salary, one-fourth of one per cent. of all the goods and merchandise imported or exported by English merchants at Pisa.

The main historical value of this venerable piece of parchment consists in the remarkable sentence with which it closes, namely, "The said Lorenzo Strozzi is hereby empowered to exercise all the usual powers and enjoy all the rights and privileges which other consuls hath formerly enjoyed there or elsewhere."

From this period forward, as international commerce increased, it became more and more common among the commercial nations of Europe to maintain consular establishments at all the maritime ports of each other. By

degrees, as the utility of consuls became more apparent, the practice became general among commercial nations to regulate and define by special treaty stipulations the extent and manner of exercising consular jurisdiction among them.

When we come to examine the consular system of the United States, and especially the provisions of our different consular treaties with other nations, we shall see that nearly all the fundamental rights, powers, and duties of American consuls are derived from the ancient usages, ordinances, and customs of European countries, and that the consular service of the United States is borrowed from and modeled after the consular institutions of Europe.

The various consular treaties and conventions of the United States, and the laws of Congress enacted for the purpose of carrying them into effect, will be specially noticed hereafter, when we come to discuss the history and organization of our consular service.

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#### HISTORY OF THE UNITED STATES CONSULAR SERVICE.

The consular system of the United States originated and had its early development during the decade immediately following the Revolutionary War.

At the beginning of our political existence our intercourse with foreign nations related almost exclusively to questions of a diplomatic character. We had little foreign commerce, and consequently little need of a consular service.

The way in which our consular service grew up will best be understood by a brief account of our early diplomatic intercourse. Within two months after the Declaration of Independence a diplomatic mission was dispatched to France by Congress, with Benjamin Franklin, the father of American diplomacy, at its head. The first duties of the American commissioners consisted in negotiating treaties of amity and commerce with European nations, in borrowing

money to carry on the war, and in establishing, as best they could, our national credit abroad.

The powers given the commissioners were indefinite. They were instructed to negotiate treaties, to purchase military supplies, to borrow money, and to take charge of the political and commercial interests of the United States generally. In short, to do whatever the interests of the country seemed to require. These activities involved the exercise of both diplomatic and consular powers. At first there were few consular duties to perform, as we had as yet little or no foreign trade; but as our political and naval relations with France became more intimate, attention to such duties became more frequent and necessary; American seamen in particular required attention; and so in the course of time our diplomatic agents, or commissioners, were obliged to exercise consular functions, as well as diplomatic duties. The whole business of our foreign relations was thus included in the same service, and both duties were performed by the same officers.

It has been remarked that American diplomacy may be termed, altogether, of a commercial character; at least, its legitimate origin being in commerce, our treaties for the most part, have consisted of arrangements for the regulation of trade, navigation, and commerce.

The War of the Revolution was itself, in a large measure, connected with commerce. The various treaties between the United States and the powers of Europe, by which our national independence was recognized, mark an epoch in the diplomatic and commercial relations of civilized nations, in that they are the first to convert diplomacy exclusively to purposes of commerce. The basis upon which these treaties were negotiated on our part is worthy of the most serious study as embodying the principles which lie at the foundation of our diplomatic intercourse with the nations of the world. The provisions of the first treaty of amity and commerce between the United States and France, negotiated by Franklin and concluded on the 6th of February, 1778, are especially deserving of attention.

That treaty is believed to be the first instance, in the diplomatic record of nations, in which the true principles of all fair commercial negotiations, between independent states, were laid down and proclaimed to the world.

"That Treaty," says the author of the American Diplomatic Code, "was to the foundation of our commercial intercourse with the rest of mankind, what the Declaration of Independence was to that of our internal government. The two instruments were part of one and the same system; matured by long and anxious deliberation of the founders of this Union, in the ever memorable Congress of 1776; and as the Declaration of Independence was the foundation of our municipal institutions, the provisions of the treaty with France laid the cornerstone for all our subsequent intercourse with foreign nations."

This remarkable state paper, which contains a statement of nearly all the principles which have since governed the United States in their intercourse with foreign nations, among other things declares: "The Most Christian King of France and the thirteen States of the United States of North America, willing to fix in an equitable manner the rules which ought to govern the correspondence and commerce between their respective countries, have agreed that \* \* \* \* the two countries shall mutually have the privilege of maintaining consuls, vice-consuls, and commissioners of commerce, in the ports of the other, whose functions, rights and privileges shall be regulated by a 'particular agreement.'" The particular agreement for regulating the powers of consular officers of the two nations respectively was not finally perfected until 1788, ten years after the ratification of the treaty of commerce.

The first step taken towards introducing some system into the foreign service was a joint resolution of Congress in 1785 declaring that it was expedient that the United States should appoint consuls abroad, and "that the Ministers of the United States in European countries are empowered and authorized to exercise the powers of consuls

general in the countries to which they are accredited, provided, however, that no additional salary shall be allowed them for such service." This resolution, while it definitely recognized the consular service, in no way defined the duties or powers of consular officers; it simply recognized the existence of the system, and nothing more. The system, however, if it may be called such, was not only a very crude one, but it was distinctly a defective and poor one, because it failed to give the consular service an organization separate and distinct from the diplomatic service; and because it placed the management and control of the consular service in the hands of our foreign ministers, instead of one of the executive departments at Washington. In thus uniting the two branches of the foreign service Congress not only acted unwisely, but it also totally disregarded the recommendations of Franklin and Adams. Mr. Adams, in criticising this action of Congress, said, "My idea is this: Separate the office of public minister entirely from that of consuls and commercial agents. By blending the business of a diplomatic office with that of a consul, the administration of our diplomatic and commercial affairs becomes so confounded with each other, that I am sure no satisfaction can ever be given to the public in the disposition of its foreign affairs."

Franklin also wrote about the same time that merchants and captains of American vessels were continually writing to him for his opinion and advice, or for orders, or for leave to do this or that, "so that much valuable time is lost to them, and much of my time is taken to little purpose, on account of my ignorance of consular affairs and duties."

Washington also recognized fully the necessity of organizing a consular service independent of the diplomatic corps. In one of his early messages to Congress he said, "The patronage of our commerce and of our merchants and seamen calls for the appointment of consuls in foreign cities. It seems expedient to regulate by law the exercise of that jurisdiction and those functions which are permitted

to consuls, either by express convention or by a friendly indulgence, in the place of their residence."

There can hardly be a doubt that a strong, independent, and efficient consular service at that period of our national history would have been of the highest value in restoring the foreign commerce of the country, which had been completely paralyzed by the war with England. Unquestionably, a good consular service at that time would have also helped American merchants greatly in developing a trade with other countries than England; and it is quite possible also that the British government at that time might have been induced to withdraw the vexatious restrictions which it so long continued to impose upon our trade, had there been an energetic body of American consuls in England to set forth intelligently the advantages to both countries of an unrestricted trade.

At the close of the Revolutionary War our commissioners in Europe had already negotiated treaties of amity and commerce with France, Holland, Prussia, and Sweden; and each of these treaties contained a provision similar to that already mentioned in the treaty with France, stipulating that the functions and powers of consuls should be regulated thereafter by a particular convention for that special purpose.

The first nation with which we concluded a special consular convention, in pursuance of this arrangement, was France. It was signed by Thomas Jefferson and the Plenipotentiary of France, on the 14th of November, 1788. It was by far the most liberal consular treaty, and gave to the consuls of the two nations respectively more extensive powers, privileges, and jurisdiction than had ever been granted before by any treaty. With a few slight modifications, it has served as the model for every consular convention which the Government of the United States has made since that time. At the time it was first published it attracted the attention of all Europe on account of its advanced and liberal provisions in regard to the exercise of consular rights, duties, and privileges.

Although this convention bears the signature of Thomas Jefferson, and was in fact negotiated by him while Minister to France, the originator and author of all its essential provisions and principles was Benjamin Franklin. Four years before that date, while Franklin was yet Minister to France, he had negotiated with that government a special consular convention, which had failed of ratification by Congress. It is a singular fact that Jefferson, Washington's first Secretary of State, was opposed to a consular treaty, altogether, and thought we were better off without any. The diplomatic correspondence and the debates in Congress relating to our consular treaty with France form altogether one of the most instructive and interesting chapters in the history of modern consular systems. It is worthy of note here that when the treaty was transmitted to Congress for ratification, Jefferson—who had at that time returned from France and had been appointed Secretary of State by Washington,—urged the enactment of a law by Congress giving consuls a fair salary, prohibiting them from engaging in trade while holding a consular position, and restricting all the principal consular appointments to native born American citizens;—an eminently sound and sensible suggestion which Congress had not the wisdom to adopt. The minor offices, such as consular agents and vice-consuls, Jefferson thought, might be given to the best subject residing at the port, whether alien or citizen. Had Congress adopted the suggestions of Franklin and Jefferson in its legislation for carrying the French treaty into effect, our consular service for the next fifty years might have been a boon to our foreign commerce and a benefit and a credit to the nation.

The act passed by Congress in 1792 for carrying into effect the consular convention with France was the first law of the United States which professed to organize a consular service. The act did nothing more, however, than simply to recognize the existence of the service, to impose upon American consular officers certain specified duties, and to

provide a schedule of fees which they were entitled to collect for their official services. It gave them no salaries whatever; it in no way defined the extent of their powers or the duties to be performed by them; it imposed no qualifications for the office, and gave the service neither character, standing, nor dignity. The appointment of consuls was left entirely to the discretion of the President, unregulated and unhampered by any legislation or restriction, save by the general restrictions imposed by the Constitution.

For the next thirty years the only consuls for whom salaries were provided by law were those at Tangiers, Tunis, and Tripoli, in the Barbary States of the Mediterranean; and these provisions were forced upon Congress by reason of our political relations with those piratical powers. Such other consuls as the President saw fit to appoint received no salaries from the Government, and were paid for their services, if paid at all, by the fees of their offices. Long afterwards provision was made by Congress for small salaries for our consuls at London and Paris, and these two offices for more than thirty years were the only salaried consulates of the United States in any civilized country. As late as 1853 there were but ten salaried consuls in our entire service. The saving clause,—the salvation, so to speak,—of the service during the first half-century of our national life was that our Presidents, following the traditions of the British foreign service, confided the administration of the consular system exclusively to the Department of State.

The Department of State was among the earliest of the great divisions of the national administration, created by Congress in 1789, for facilitating public business, after the adoption of the Constitution. It has always ranked as the leading department of the Government. The Secretary of State is the only member of the Cabinet who in ordinary times can influence, not only the foreign policy of the Government, but also the peace and welfare of the nation,

without the permission of Congress. By the negotiation of a treaty he may, if the moment be well chosen, draw the country into a foreign complication or engagement, from which it would be extremely difficult to withdraw with national honor and credit; or he may inaugurate a new and possibly beneficial commercial policy. By hasty action, by an intemperate or ill-timed insistence on national or individual rights, by even a want of tact or a hasty word, he or his agents abroad and under his control may arouse the anger of a foreign nation, hard to be appeased, and thus embroil the country in a political quarrel, or possibly bring upon us a foreign war. The Secretary of State is, therefore, by reason of his influential position and power, more carefully selected than any other member of the President's Cabinet. He is generally a ripe statesman with a large acquaintance with public affairs, and in many instances has had wide experience in the diplomatic service of the country. A department habitually controlled by a man of such character and experience is pretty certain to exercise unusual watchfulness and care in the selection of the public agents which it sends abroad, and in the management of its affairs; and such, indeed, is the traditional history of our Department of State.

For the convenient dispatch of business the State Department is divided into several bureaux. Of these the Consular Bureau and the Diplomatic Bureau are the most important. Ever since the organization of the State Department the Consular Bureau has been under the direction and immediate control of one of the Assistant Secretaries of State,—usually the Third Assistant Secretary,—following in this respect the traditions and practice of the British Foreign office, where the consular service is controlled by one of the permanent under secretaries. Unlike the English civil service, our own is not permanent; but as far as circumstances would permit, our Department of State has made few changes in its assistant or under secretaries. Mr. Hunter, for instance, was Third Assistant Secretary,

and had charge of the Consular Bureau continuously more than fifty years. It is greatly to the credit of the department that in our changing service it has uniformly recognized the need of experience and special knowledge in conducting the Consular Bureau.

The routine business of the Consular Bureau is conducted, of course, in much the same way as in other departments of the Government and as in the foreign offices of European countries.

The Chief of the Consular Bureau is, perhaps, the hardest worked and poorest paid official in the whole department. He occupies a public room, accessible to everyone who chooses to call upon him on any matter of business connected with his department. He carries every detail of the department in his head. He is a living and walking encyclopedia of all knowledge relating to the consular service. He makes it his business to know all that is knowable about every United States consulate in the whole world, even to the smallest details and conditions of the office. With few exceptions, he is personally acquainted with every principal officer in the consular service, and he often knows more about them officially than the consuls imagine. He has long official ears, and a still tongue. He listens patiently and politely to every complaint and to every application for advice, whether made to him personally or by letter, and returns a civil answer; but he seldom imparts much real information, and never volunteers unsolicited official advice. He is habitually courteous and polite, both in his personal intercourse and in his official correspondence, and is always cautious, careful, and politic. He is at once the model and the quintessence of American official propriety and courtesy, and two hours of personal intercourse with him in his office is worth more to a young, inexperienced consul than all the books on official etiquette ever written.

The most glaring defects of the consular service as they afterwards developed under the act of 1792 were that no

special qualifications or fitness for the office and no civil service examinations were required. Neither age, nationality, educational qualification, nor special training of any sort were made necessary qualifications by law for appointees to consular positions of any grade, from the highest to the lowest; no official gradation of the consulates was provided for, and the greater number of consular positions were filled by persons who were permitted by law to engage in trade at the ports where they exercised the duties of their office, and many of them were foreigners. Instead of fixed salaries, our consuls were allowed to retain a certain amount or all of the fees collected by them for official services performed. Under such a system the official fees of the consul were the only emoluments of his office; consular fees were called "perquisites," and at ports where there was a large American trade the perquisites of the consular office frequently amounted to as much as or more than the salary of the President of the United States. At Liverpool, for instance, the consular fees at one time amounted to more than \$25,000 a year; at a number of other consulates also the fees amounted to \$10,000 or over annually.

It followed as a natural consequence that in course of time these fat offices abroad came to be eagerly sought after as political prizes or rewards for political services to the friends of the party in power. It came to be an accepted American maxim that "to the victor belong the spoils," and after a while Congressmen came to regard consular appointments as a legitimate means of rewarding their partisan friends for past services. In short, under the "spoils system" our consular service became a large political prize lottery for the benefit of the party in power.

Moreover, it resulted that at foreign ports where there was little American trade, and where there were consequently few fees or perquisites of office, it became almost impossible to secure the services of an American of character to fill the consular office; and in any event, the person

selected, whether American or alien, was almost certain to be engaged in trade at the port or place where he exercised the duties of the office. A consul should have no commercial engagements. When a consul is a merchant it is only natural that he should be more attentive to his own private business than to the interests of the Government or of the citizens of the country which he represents. He is likely to be engaged in that business which has the chief export trade of the country he represents, and by reason of his official position he has the power of becoming acquainted with the private business of the merchants exporting the same class of goods. In this way he may,—and experience shows that he usually does,—so use his official position and the special knowledge derived from it as to benefit his own business, to the serious detriment of other merchants engaged in a similar business.

The principal commercial countries of Europe, which have carefully studied the needs of their consular service, and which understand the importance and the value of consuls to foreign commerce, have long since abandoned the system of employing unsalaried consuls, or of allowing them to retain their fees or to engage in trade at the ports where they reside.

Numerous attempts were made by our Presidents and Secretaries of State, for a period of over sixty years, to induce Congress to reorganize the consular service and place it on a footing of efficiency and dignity suited to the requirements of our national interests. The most notable effort in this behalf, perhaps, was that of Edward Livingston, the Secretary of State under President Jackson in 1833. Mr. Livingston's report, which was transmitted to Congress by President Jackson, is one of the ablest state papers in existence regarding the requirements, defects and history of our consular system. He clearly pointed out that in none of the various acts of Congress for carrying into effect our consular conventions with foreign countries had the rights, duties and privileges of consuls been accu-

rately defined, and that for nearly fifty years the consular service had been left almost exclusively to the government and control of the State Department, without a single enactment of Congress suitably empowering the President or the Secretary of State to direct consuls in the performance of their important duties abroad. It was not until 1856 that the service was finally organized upon its present basis. It is remarkable that at the time this law of 1856 was enacted our ocean commerce and mercantile marine had nearly reached, in point of tonnage, that of Great Britain, and that our foreign carrying trade greatly exceeded that of any other commercial power in the world. Some idea may be formed of its magnitude at that time when we remember that a few years later, during the Civil War, our merchant marine furnished seventy-six thousand sailors to man our blockading squadron on the Atlantic Coast of the Confederate States.

It was the aim of the act of 1856 to reduce the consular service to a regular system, somewhat in line with the British consular service, which had been reorganized by Mr. Canning in 1825; by providing for fixed salaries at all the principal consulates, and by requiring the return to the Treasury Department of all consular fees collected at such offices. The consuls at places where the fees were inconsiderable and the work light were to be compensated by the fees of the office as before. The act entirely failed, however, to correct the radical and really serious defects in the established system.

Since that time several other attempts at reorganization have been made by Congress, notably that of 1874, when the system was considerably modified; but none of these acts have gone further than to give it the stereotyped form of such services in other countries. The form is there, but the spirit and substance are still wanting. As at present organized, the service consists of the usual consular gradation or classification; that is, consuls general, consuls and commercial agents. In addition to these there are deputy

consuls, consular agents, deputy and vice-consuls and thirteen consular clerks. Deputy and vice-consuls are not, under our system, full permanent consular officers, and perform no functions except in the absence or during the disability of their principals. While in charge of the consulate these officers for the time being perform the duties and draw the salaries allowed to their principals, and all their acts have the same force and validity as though they were permanent officers.

Our consuls general, although they outrank the consuls, perform precisely the same duties at the ports where they reside as ordinary consuls. In this respect our service differs from that of most other countries, which usually maintain a consul and consul general at the same port.

Our consuls general, in addition to their ordinary duties as consuls at the place of their residence, are charged with an indefinite kind of supervision over the different consulates within the limits of their jurisdiction. They are given a general oversight over consuls subordinate to them, and are required to report to the State Department, from time to time, in regard to the service generally within their districts. The authority of consuls general over the consuls under them is, in fact, very limited, and relates for the most part to official suggestions or advice. They have no authority to investigate a consul's books or to control his official acts or to interfere in any way with his official correspondence and conduct, without special authority from the State Department.

Several of our ministers resident abroad are also consuls general, namely, those at Corea, Liberia, Persia, Servia, and Siam, and at two or three of the South American republics. At Constantinople the Secretary of Legation is also consul general. These, however, are usually classed with the diplomatic service. Our consul general in Egypt is also a political agent. His office is partly consular and partly diplomatic in character.

In countries where we have no consul general with

supervisory powers over the consulates, the United States Ministers resident in the country are given a general oversight of them. And in all foreign countries our diplomatic representatives exercise the same supervision over the consuls general that consuls general exercise over the consuls under them. The United States Consul General in Cuba is directly responsible to the State Department. In China, owing to the peculiar conditions of the country, our consuls are required to communicate immediately to the American Minister at Pekin an account of every event of importance affecting American interests, and to furnish him a monthly summary of all their correspondence with the local Chinese officials.

The district embraced within the jurisdiction of consular officers of all grades is defined by the President of the United States. The consular commission usually describes the limits of the consular district as embracing all places nearer to the official residence of the consul than to the residence of any other consul within the same country.

All consuls general, consuls, and commercial agents of the United States are appointed by the President, by and with the advice and consent of the Senate. Consular agents are commissioned by the Secretary of State.

The salaried consular officers are divided into different classes or grades, according to the amount of salary allowed, ranging in amount from \$4,000 to \$1,000. In respect to their powers and duties, however, there is no difference between them; for all legal purposes the lower-grade consuls have the same powers and perform the same duties as consuls of the higher grades. They are each and all alike in legal contemplation "full permanent and principal consular officers of the United States"; the only difference between them being the amount of salary.

As no law has ever been enacted permitting consuls to be promoted to a higher grade, this classification is practically meaningless, except to define the salaries at different ports. In all the higher grades the consular officer is not

permitted to engage in trade, and must be a natural born or naturalized citizen of the United States. In the lower grades, where the salaries are insufficient to support the consuls, they are allowed to retain their fees and engage in trade.

What corresponds to the vice-consul in the service of European countries, is called in ours a consular agent. He is under the immediate control of the consul, but stationed at a place or port within his consular district, at some distance from the main consulate, to which he is subordinate. The duties of a consular agent in our service, although substantially the same as those of a full consul, are performed, not as a full consular officer, but as the agent of the consul and in subordination to him. Consular agents are, therefore, not entitled to correspond directly with the Department of State, but only with their principals. A consular agent is not entitled to receive an exequatur, but acts under the exequatur of his superior. The office of commercial agent is peculiar to our service, and has not heretofore been recognized by the Law of Nations, although by the laws of the United States their acts are fully recognized as those of a full consular officer. The title of commercial agent originated in the practice of our Government of appointing an officer to perform consular duties at ports where no provision had been made by Congress for consular salary, and which enabled the President to appoint such an officer without the consent of the Senate.

Broadly speaking, our consular service at present consists of 41 consuls general, with salaries ranging from \$7,500 to \$2,000; 160 salaried consuls who are not allowed to engage in trade, with salaries ranging from \$4,000 to \$1,500; and 20 consuls with salaries of \$1,000, who are allowed to engage in business. Besides these there are about 80 consuls, 40 commercial agents, and 390 consular agents who receive no salaries, and are allowed to engage in trade, and who are authorized to retain their official fees in lieu of

salaries. There are also 13 consular clerks, making in all between 700 and 800 officers in the entire consular service.

It is a singular fact that the consular clerks, who stand at the foot of the service, are the only officers in the whole foreign service of the United States whose tenure of office is permanent, or during good behavior. The original design in creating the office was to form the nucleus of a permanent consular service. They were at first called consular pupils, after the French system. These consular pupils, or clerks, after a limited experience in the Department of State, where they acquire a great deal of useful knowledge of the service, are assigned for duty at those consulates at which, in the opinion of the Secretary of State, they will prove most useful. They may be transferred from time to time, also, to different posts. The law expressly provides that no consular clerk shall be removed from office, except for cause stated in writing and submitted to Congress; and it is a noteworthy fact that no consular clerk in our service has ever been removed for cause since the office was created. Several of them have been promoted to the office of consul; one or two have resigned, and two of them have regularly risen in the service to the position of consul general. It is a great pity that Congress does not provide for a greater number of these consular pupils, for if it did so there would be but a short time until our consular service would be greatly improved by the system.

As soon as a consul has been regularly notified of his appointment, he is required to execute and file with the State Department an official bond, and to subscribe an oath of office. He is then allowed thirty days in which to prepare himself for his duties and to receive his instructions from the Department, during which time he is allowed his full salary. As a rule, the only instructions which a newly appointed consul receives before leaving for his post of duty consist of the ordinary printed instructions contained in the Consular Regulations of the Department, a copy of which is given him with his commission and official passport.

While in attendance at the Department of State the consul should make the acquaintance of his immediate superiors in office, the Third Assistant Secretary of State, and the Chief Clerk of the Consular Bureau; and he will, of course, not fail to call upon the President and thank him for his appointment. It is customary for the Secretary of State to take the consul to the Executive Mansion and introduce him formally to the President, before he leaves Washington for his post of duty.

It may seem a matter of trifling moment, but it should never be forgotten by a newly appointed consul that the first impressions which his personal demeanor and bearing produce upon his official superiors at Washington go a long way toward establishing him in their favorable or unfavorable opinion.

While receiving his instructions, a consul should run carefully through the correspondence with his predecessors in office on file at the Department, in order to make himself familiar with the former history and business of the consulate. Above all, he should obtain from the State Department an official copy of all existing treaties between the United States and the country in which his consulate is situated. The rights, privileges, powers, and duties of consuls differ materially in different countries. These matters are for the most part defined and regulated by special treaties or conventions. The United States has at present fifty-two separate consular treaties with the different countries of the world. Before a consul enters upon his duties, therefore, he should be perfectly familiar with all the treaty provisions between the country to which he is accredited and the United States, relating to consular duties, rights, and powers, as well as those relating to navigation, commerce, and trade between the two countries.

By the provisions of some of our treaties, consuls are invested, in addition to their ordinary functions, with extensive judicial powers and privileges, as in Turkey, Morocco, Persia, China, and Corea. In many countries our

consuls are entrusted by treaty provisions with certain duties in relation to the extradition of criminals, and the right to claim deserters from vessels of the United States. In most European countries our consuls are in like manner invested with exclusive jurisdiction over the disputes between the masters and crews of vessels of the United States, over the estates of American citizens dying abroad, over shipwrecks and shipwrecked property, and various other kindred subjects. Before proceeding to his post, therefore, a consul should specially inform himself regarding the details of every treaty provision with the country to which he is accredited, relating to all these important subjects.

After his arrival at his post abroad, and before entering upon the discharge of his duties, a consul must first obtain his exequatur, that is, the official recognition of the government of the country to which he is sent, or its consent that he may perform his official duties. It is a rule of International Law that no public officer of one nation can perform his duties within the dominions of another country without the consent of the government of that country. All governments have the right to refuse to recognize a foreign consul, on the ground that he is personally or politically objectionable. The government of Turkey, for example, has frequently refused to issue exequaturs to American consuls, on the ground that the officers appointed were Christian missionaries. The government of Austria on one occasion refused to recognize one of our consuls, on the ground that he had been an Austrian subject, and was personally objectionable to the country on account of his political writings.

It is a rule among European governments to inquire minutely into the personal and political antecedents of foreign consuls before permitting them to enter into official relations with them.

A consular exequatur may also be withdrawn or cancelled at any time by the government which issues it, for any misconduct or act of official discourtesy on the part of

the consul in his intercourse with the government, or for writing obnoxious political articles, or making offensive political speeches, or any such conduct. On one occasion the President of the United States cancelled the exequatur of the French Consul at Boston because he took part in an attempt to rescue a French vessel from a United States marshal. A more remarkable case was that of Mr. Bunch, the British Consul at Charleston, in 1861, who, at the instance of his own government, entered into a political correspondence with the Confederate Government. The act was a violation of the laws of the United States; and although it was done at the instance and under the direction of the British Government, President Lincoln cancelled the consul's exequatur, and refused longer to recognize his commission.

In diplomatic usage an exequatur signifies a written document authorizing a foreign consul to execute the duties of his office within the district of his consular dominion.

After receiving his exequatur, the consul then applies to the officer in charge of the consulate for possession of the consular seal, and the archives, and all public moneys and other property belonging to the consulate. A formal inventory of these is made and a receipt given by the incoming to the outgoing officer. If there are any public funds in the hands of the former incumbent of the office, or if there is any property belonging to the estates of deceased American citizens, these must be handed to his successor.

Having taken possession of the office, and entered upon the discharge of his duties, the consul must immediately give notice of the fact to the Department of State, to the United States Minister, and to all American consular representatives in the country where his consulate is located. He should in like manner officially notify the local authorities and each of the different consular representatives of other nations at the port, with whom he is likely to have official relations in future.

THE DUTIES, FUNCTIONS, RIGHTS, AND PRIVILEGES OF  
CONSULS.

The first duty of a consul on taking charge of his office is to call in person upon all the principal military and civil authorities at the place where he is to reside. The list of calls should include, not only the leading local officials, but also the various consular representatives of other nations, and the heads of the different chambers of commerce and boards of trade; in fact, everyone with whom he is likely to come in contact in the performance of his official duties. These calls of ceremony are not only a convenient means of official notification, but are necessary acts of courtesy which no officer in the foreign service of his country can afford to neglect.

The newly arrived consul, if he hopes to get along smoothly in his official duties, will not neglect also to put himself as soon as possible on easy terms of social intimacy with all the leading representative citizens, as well as the officials of the place where he resides. It is a part of a consul's duty to make his country not only respected, but liked, abroad, both by the governing classes and by the people at large, to promote among them a sentiment of good feeling for his countrymen. To this end his own personal popularity is of the utmost consequence. Moreover, one of the greatest aids to a consul in the performance of his duties, is to be on terms of personal intimacy with the officials and people where he resides. The significance of official and social amenities which pass between our consular and diplomatic representatives and the local officers and leading people of the country where they are sent is often misunderstood and is sometimes misrepresented. From time to time we hear expressions in this country about our foreign representatives "toadying" to the official or aristocratic classes abroad. Such expressions are generally not only

uncalled for, but are exceedingly undignified. Great nations do not toady to one another, for such acts imply servility. Acts of official courtesy are entirely devoid of personal significance; they are simply meant as an expression of that international good feeling which it is the highest duty of every consular and diplomatic officer of the United States to cultivate.

After a consul has made the round of ceremonial calls and has, perhaps, enjoyed the agreeable hospitality of the local officials and the foreign consuls at his post, he is apt to settle down to the everyday duties of his office with a sense of lonely responsibility. He finds himself suddenly called on to perform a number of official acts in relation to commercial transactions and dealings, the details of which he is probably wholly unfamiliar with. A variety of questions connected with foreign trade, navigation and shipping, immigration, and naturalization, involving vast public interests or valuable personal rights, demand his immediate attention and call, perhaps, for prompt official action. He is far beyond the reach of the advice or control of his government; he has no legal counsel within reach or at his command, and has absolutely nothing to guide him in the discharge of his delicate and important duties but the few rules laid down in his official instructions. In almost every other branch of the civil service, there is some clerk or other subordinate official who has been long enough in the office, and who has had sufficient experience, to be able to conduct the routine business and to advise his newly appointed chief in the ordinary course of procedure until he becomes acquainted with the details of the office. Under our changing system of appointments, except at a few of the leading consulates, there are usually no permanent subordinate officers, and the newly arrived consul suddenly finds himself, not only entirely ignorant of the simplest routine duties, but without the assistance of anyone who is familiar with them. It is his first business, therefore, to master the details of his office, and to familiarize himself with the local

conditions, customs, and requirements of his post. To do this he should begin systematically to inform himself accurately in regard to the local laws and regulations relating to the customs, harbor, and lighthouse dues, the quarantine regulations, and all matters relating to the foreign and domestic trade, commerce, and navigation of the district and country where he is located.

There are two fundamental principles governing the powers and duties of consuls which every consular officer should keep constantly in mind. The first is, that among civilized nations a foreign consul can legally exercise no judicial functions whatever, nor perform any act of a judicial character, without the consent, by treaty stipulation or otherwise, of the government of the country to which he is sent. The second is, that no act which a consul can perform, whether judicial, administrative or otherwise, has any validity in law unless authorized by some legal enactment of the government which he represents.

I have before said that every consul, before starting for his post of duty, should make himself thoroughly familiar with every detail of the treaty between the United States and the country to which he is accredited. It may be said that the various treaty agreements, and the laws of the United States enacted for the purpose of carrying them into effect, form the American Consuls' Horn Book. No amount of "instructions" from the State Department, however specific, could be of much service to a consul who is really ignorant of the treaty obligations and treaty rights of his country. If he understands these thoroughly, he is not likely to go far wrong in the discharge of his duties; but if he does not, the probabilities are that sooner or later he will become involved himself, and may needlessly involve his government also, in some unprofitable dispute with the local authorities or with the country in which he resides.

In the various duties which a consul is called upon to perform on behalf of his countrymen or in relation to the commercial interests of the nation at large, he may, if he is

ignorant of treaty provisions and requirements, assume a position or claim a right highly injurious to our interests; or he may, from the same ignorance, refuse or neglect to assert a right or to claim a privilege, where the case demands the most prompt and vigorous action. In most of these circumstances, as before stated, a consul has practically nothing to guide him but his own knowledge and good sense; and if he is ignorant or ill-informed, especially in regard to the treaty rights and obligations of his country, he may jeopardize, or even sacrifice, the most important individual or national interests. At home every officer is surrounded with the means of obtaining information and advice; abroad a consular officer is entrusted with the most important and delicate duties, and is out of the reach of control or advice. The importance, therefore, of a clear and definite comprehension, on the part of consuls, of the treaty rights and obligations of their country can hardly be overstated. The Department of State must necessarily trust in all such matters to the knowledge, intelligence, and discretion of the consul, on the one hand not to permit the rights of his country or of his countrymen to be invaded without protest, and on the other hand not to claim rights which cannot be maintained.

<sup>1</sup> There are numerous circumstances which render it not only proper, but absolutely necessary, for consuls to act on behalf of their country in matters of a diplomatic character, especially in the absence of the American Minister. In many European countries the right of consuls is secured by treaty to correspond with the local authorities in case of any infraction of treaty; and in case there is no American diplomatic representative in the country, they may correspond directly with the government of the country in which they reside.

<sup>1</sup> With some countries the United States has secured by treaty the right of consular officers, in the absence of our diplomatic representative, to make official requisitions on behalf of our government for the surrender of fugitives

from justice, under our extradition treaties. The right to take depositions is secured to our consuls by a number of conventions. Exclusive jurisdiction for consuls over the disputes between masters, officers, and crews of United States vessels, including questions of seamen's wages, is likewise secured by treaties with numerous European governments; also the right to claim deserters from American vessels.]

The powers of consuls to adjust damages suffered by American vessels at sea, and in all matters of wrecks and salvage, are also secured by a great number of treaties; and in all cases of shipwrecks of American vessels within their respective consular districts, it is the duty of our consuls, so far as the laws of the country will permit, to take all proper and necessary measures, as well for saving such vessels and their cargoes as for storing and securing the merchandise reclaimed and taking an inventory of the same; and to see that all such property is restored to its rightful owner.

[ Our consuls are specially authorized and required to receive the protests of ship masters, ships' officers and crews, or other persons interested, in relation to any and all matters affecting the interests of American citizens.]

[ Consuls are also authorized to act as administrators on the estates of all citizens of the United States dying intestate within their jurisdiction and leaving no legal representative or partner in trade. Indeed, this is one of the most sacred and responsible trusts imposed by their office, and in this respect they directly represent their government. The consul is the only person who can legally touch such property, and it is made his duty by law to take charge of the same for the benefit of the legal heirs of the deceased. A consular officer by the law of nations is the provisional conservator of all property within his district belonging to his countrymen deceased therein. He has no right as a consular officer, apart from the provisions of treaty, to administer in the local courts, but he is author-

ized to collect, preserve, and guard the effects, or to assist others in collecting and transmitting them to the United States. A consular officer may always intervene, in the local courts or elsewhere, by way of observing the proceedings, and he has the right to be present at all proceedings affecting the estates of his countrymen, as their official and national representative. In most countries these rights are secured by express treaty stipulations. |

| Consuls are also instructed by law to provide sick, disabled or destitute seamen within their districts with suitable relief, and to send them at public expense to the United States. It is also their duty to return to the United States at public expense any minor who has gone abroad without the knowledge and consent of his parents or guardians, as a sailor or stowaway on board an American vessel. |

| Nearly all of these rights and duties of consuls are recognized by the usage of nations, and if they have not always been distinctly specified in our consular treaties it is because they have seemed too well understood to require special mention. |

By the usage of most civilized nations consular officers, as such, have no acknowledged representative or diplomatic character, and are not entitled to the rights, privileges, and immunities of diplomatic officers. They have, however, a certain representative character as affecting the commercial interests of the country which they represent, which entitles them to the special notice and protection of the law of nations. They are regarded as public officers both of the country which appoints them and of the country which receives them. The office which they fill and the duties which they perform are *international*. |

Generally speaking, consuls in European countries and in America may claim for themselves and their offices, not only such rights and privileges as have been specially conceded, but also such as have been sanctioned by custom and local laws and usages and have been enjoyed by their predecessors or by the consuls of other nations, unless a formal

notice has been given that these will not be extended to them.

By the general usage of nations, a consul may place the arms of his government over the doors of his office or residence. Permission is also given him to display the national flag over the consulate. A consul may claim inviolability for the consular seal and the archives and other property of his office, and their exemption from seizure or examination.

A consul is exempt from military duty and from serving on juries, and from other public duties, and his office and residence are exempt from the billeting of soldiers upon his premises. The generally accepted principle is this: that although a consul is not a public minister and cannot pretend to diplomatic prerogatives and privileges, he is, nevertheless, charged with a commission from his government, and is accepted as a public officer by the government where he resides; and he ought to enjoy such immunity from all official restraint, as will permit him to perform freely his duties. The sovereign who receives him tacitly engages to grant to him all the freedom and protection necessary to execute the functions and duties of his office with propriety.

A consul is, however, under public law, subject to the payment of taxes and municipal assessments on his property in the country where he resides, and in general he is subject to the civil and criminal jurisdiction of the country in which he resides. It is generally considered, however, that if a consul is not engaged in trade and does not own real property, he ought not to be subject to arrest or incarceration, except on a grave criminal charge, in which case he may either be punished by the local laws, or sent back to his own country.

The privileges of consuls who are engaged in trade are more restricted than are those consuls who are not so engaged. Many of the consular conventions of the United States contain what is commonly called the "most favored nation clause." In such cases our consular representatives

are entitled to claim as full rights and privileges as have been granted to consuls of other nations. In all such countries our consuls must look to those treaties for a full definition of their official rights and privileges.

The inviolability of the consular office and dwelling; of the archives and seal of the consulate; the exemption of the consul from arrest, from taxation, from military service, and from the obligation to appear as a witness in the local courts, are generally secured by special treaties, but not always. In countries where these exemptions have not been specially granted by treaty, the consul should look carefully to the established precedents and practice in such matters.

A large and important part of the duties of consuls at all maritime ports relates, of course, to shipping and navigation. The operations of merchant vessels form by far the most important function in international commerce, and a large ocean trade could not be carried on between different nations without a system of well established laws and regulations for the government of merchant ships and their crews while on the high seas and in the ports and waters of each other.

By the usage of nations, which has long since acquired the force of international law, every merchant vessel engaged in foreign trade is required to carry certain documentary or written evidence of an official character to show its nationality, its ownership, the real nature of its cargo, and the place of its destination. These documents are commonly known as the *ship's papers*, and usually include her official certificate of registry, her sea passport, her shipping articles and crew list, and also her charter, if she has one.

Whenever an American merchant vessel enters a foreign port for the purpose of trade, or for any purpose requiring the official aid of her consular representative, it is the duty of her master or captain to deliver forthwith to the consul all the ship's papers, and the failure to do so subjects the master to a heavy fine.

The object of requiring captains of merchant vessels to deliver the ship's papers into the custody of the American consul is too obvious to require much illustration. In the first place, the consul is the official representative at the port of the commercial interests of the country to which the ship belongs. He is specially sent there to facilitate the maritime and commercial operations of his country, and to protect the individual rights of his countrymen. He is the official organ and mouthpiece of communication with the local officers of the port where he resides. The custody of the ship's papers is necessary to place him in possession of the information needful for communicating officially with the customs and other authorities of the port. Moreover, in addition to the ordinary duties of his office, a consul of the United States is charged with various special duties in connection with our national revenue system, and the execution of our laws with regard to foreign immigration. These special duties not only render it necessary for him to have possession of the ship's papers of vessels from his country, but they impose upon him a vast amount of work and responsibility not generally given to consuls of other countries.

Before officially reporting the arrival of the vessel the consul is presumed to have examined the ship's papers, her manifests, her charter party, and her bill of health, and to have fully satisfied himself that the vessel has complied with all the usual requirements in such matters, and that no attempt has been made to violate or evade the customs laws or any of the rules and regulations of the port. His official certification of these facts to the authorities of the port is accepted without question, and the formal preliminaries necessary to be gone through with before the vessel can discharge or receive cargo are thus greatly facilitated.

One of the first duties requiring the attention of the consul after the arrival of a merchant vessel is to receive any protests or declarations which the captain, the sailors, or any of the passengers on board the vessel may choose to

make there, relating to or affecting the interests of the vessel, her crew, her cargo, or the interests of any citizen of the United States. The nature of such protests is various, and requires the most careful scrutiny and patient attention of the consul. They generally relate to damages to the ship or her cargo arising from the dangers incident to marine navigation; or to claims against the owners or charter parties of the vessel in matters affecting their liability as common carriers; or to insurance. Protests are also frequently made by captains of vessels or by the passengers or crew before the consul, in regard to mutinous conduct on board the vessel while at sea, and in regard to dangers to the cargo by fire or other accidents, or to events incident to her voyage. |

| Where vessels arrive in a damaged or unseaworthy condition, or the cargo has been injured from any cause, and protest has been made by the master or others, it may become the duty of the consul to order a survey of the ship to ascertain her true condition, and determine what had best be done in the interests of all concerned. For this purpose the consul is authorized by law to appoint inspectors to examine the ship's condition, and the condition of the cargo also, if necessary, and to report to him upon the same. The consul may approve the whole or any part of the inspector's report. |

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| It sometimes becomes necessary, where ships have been badly damaged, for the master or captain to borrow the money needful for her repairs. For this purpose a bottomry bond must be prepared, legal notifications given, and various other acts performed by or acknowledged before the consul. In case the vessel is condemned, the consul may authorize its sale by public outcry, and the sale of the damaged cargo also. In short, all official acts relating to the sale of damaged, wrecked, stranded, or disabled merchant ships and their cargoes, and everything relating to salvage, insurance, bottomry bonds, and such matters, come specially within the purview of consular oversight and authority and demand his immediate attention. |

Consular acts and certificates in all such matters are exceedingly important, as affecting the interests of American citizens, because when duly authenticated by the seal of his office, consular certificates in such cases are entitled to full faith in law in all the courts of the United States, and are frequently the only evidence which the party in interest is able to procure.

As long as an American merchant vessel continues in a foreign port the consul is charged with the duty of enforcing, by all legal agencies at his command, proper discipline and order on board, and also of making or causing to be made suitable examination into the sanitary condition of the vessel and the health of the crew.

Every merchant vessel, whether American or foreign bottom, before clearing from a foreign country for the United States, is required to first obtain from the consul at the port of departure a certificate or bill of health setting forth the true sanitary condition of the vessel, and a further certificate that she has duly complied with the rules and regulations for the government of seagoing vessels, and for the safety of the crew, the cargo, and the passengers.

A still more important consular duty relating to merchant shipping in foreign ports is the oversight which our consuls are required to give to alien immigrants leaving port either on American or foreign vessels.

The master of every vessel, whether foreign or American, carrying foreign immigrants on board destined for any port in the United States, is required by law to prepare for the Inspector of Immigration at the port of arrival a complete list or manifest of all the foreign immigrants on board. These manifests must also bear the certification of the United States Consul at the port at which the immigrants took passage, showing the name in full, the age, sex, and occupation of each immigrant; also the nationality, and whether married or single; whether able to read and write; the last place of residence; the place of destination beyond the point of landing; whether the

immigrant's passage has been paid by himself or by other persons or by any municipality, society, or corporation; whether he possesses any ready money, and how much; whether he has any relatives or friends in the United States, and who they are, and where they reside; whether the immigrant has ever been in any prison or almshouse, or been convicted of any infamous crime; whether he has any loathsome, contagious, or infectious disease; whether he is a polygamist; whether he is deformed or crippled; whether he is mentally sound, and whether he is under any contract for labor after he reaches the United States. These are only a portion of the facts to which a consul must officially certify as being true, from a personal examination of each immigrant, or that he believes them to be true, from the sworn statements of the master of the vessel.

If the consul has any reason to think that any foreign vessel is about to sail for the United States from the port where he resides, with immigrant passengers who are paupers or criminals or otherwise undesirable persons, it is his duty to protest instantly and forcibly to the local authorities at his port, and to notify them that such action is regarded by the United States as a violation of the comity which ought to characterize the intercourse of friendly nations.

The faithful execution of the immigration laws of the United States is largely confided to our consuls abroad. It is an onerous duty; one that requires great watchfulness, and one that oftentimes imposes a vast amount of routine work, if conscientiously performed.

Of the various routine duties of American consuls connected with merchant vessels, the most exacting are those which relate to the certification of invoices of goods and merchandise intended for importation into the United States. American consuls, in respect to goods and merchandise imported into this country, are given, under our tariff system, a sort of police jurisdiction over the merchant vessels of all nations and their inward cargoes. The tariff

Laws of the United States require that all goods and merchandise of foreign production or manufacture, intended for importation into this country, shall be fully described by the importer in what is usually known as a consular invoice, giving a correct description of the goods or merchandise; the name of the place of manufacture or production; the time and place of purchase abroad; the actual value at the time of purchase or export; and the name of the vessel in which the goods are to be conveyed to the port of entry. The object of these provisions is to prevent frauds on the revenue of the Government and to assist the customs officers of the United States at the various ports of entry to estimate equitably and truly the fixed duties prescribed by the general tariff laws of the country. These invoices are made out in triplicate, and are required to bear the official certificate or attestation of the consular officer residing at the port or district from which the goods are imported. One copy of each invoice is transmitted by a consul to the United States Collector of Customs at the port where the goods are to be entered; one copy is given to the shipper of the goods; and the original invoices are all kept by the consul and filed among the permanent records of the consulate. At foreign ports where no American consulate has been established, the invoices may be certified by the consul of any other nation at amity with the United States.

The work of certifying these invoices, and the various acts and duties required of consuls in relation thereto, are by no means trifling. In large commercial ports many thousands of invoices are signed every year. In addition to filing them in his office, the consul must keep a permanent record of them in an invoice book especially designed for that purpose. At the end of each quarter the consul is required to make an abstract of his invoices, taken from the office records, and to transmit it to the Treasury and State Departments at Washington. He is also required to keep a record of all arrivals and departures of American vessels at his port, and to make a quarterly report of the same to the Department.

All invoices certified by the consul should be numbered consecutively in the order in which they are issued, and the originals filed among the permanent records of the consulate. In cases where samples are required, these should be labeled and filed likewise.

In addition to these special duties, every consul is expected to have an accurate knowledge of the conditions of the trade and commerce of the place where he is located, and especially of the market values of the different articles of commerce usually shipped from his port or district; and he is required to keep the Treasury and State Departments at Washington fully informed regarding all events of interest touching the industries, trade, commerce, and navigation of the country in which his consulate is located.

In short, American consuls are expected to be wide awake, and to keep the Government fully informed respecting everything that affects the commercial interests of this country. They are expected to keep a watchful eye for every new opening or opportunity for American trade and for every new market for the products and manufactures of their country. A consul is on the ground, and understands, or ought to understand, the conditions of trade where he resides. His official position gives him easy access to many avenues of information from which his countrymen engaged in private business are necessarily debarred. He can or should place himself in communication with the local departments of trade and other bureaux or sources of official information which are inaccessible even to diplomatic officers residing in the country. With such facilities at his command, there is scarcely a limit to the opportunities afforded a consular officer for obtaining the most valuable information for his country. If he is an intelligent and observing man, he is in a position to offer a thousand useful suggestions and to supply a world of the most valuable information to his country and to his countrymen, in matters of the very highest economic importance.

The duties of consular officers in respect to the development of foreign trade are of special interest at the present time, and the subject is attracting more attention than ever before. That it has become a subject of the most serious concern both in this country and in Europe, is demonstrated by the intense interest shown everywhere in the consular reports and bulletins published by the Department of State at Washington. Twenty years ago the "Commercial Relations of the United States" were published annually, in heavy volumes which nobody read. At the present time our Consular Reports are regularly published in daily, weekly, and monthly editions, and are read with the liveliest interest by business men, political economists, and statesmen, all over the world.

Aside from purely routine commercial duties, our consuls are entrusted with a sort of police jurisdiction over the merchant vessels of their country and their crews while in the territorial waters or ports of foreign nations. The extent of such jurisdiction or authority depends both upon treaty stipulations and the usage of nations.

By the usage of nations, which has acquired the force of international law, merchant ships while on the high seas are regarded, for all the purposes of national jurisdiction, as being within the territory of the country to which they belong, and under the protection of the flag which they carry. In theory, they form a part—a floating portion—of the national territory. The flag which covers them is not only a symbol of their nationality; it signifies absolute and exclusive national authority and jurisdiction over the vessel, her crew, her cargo, and everyone on board. Every act of such vessel while on the open seas, and every act of any person on board, is in theory an act committed within the territory of the nation to which the vessel belongs and under whose flag she sails, as much as though the ship were lying in a port or harbor of that country.

When such vessels, however, enter the harbors or ports of a foreign country, a different rule comes into operation.

It is a part of the law of civilized nations that when a merchant vessel of one country voluntarily enters the port of another for the purposes of trade, it subjects itself to the laws of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding. American and English judges have uniformly recognized the right of the courts of the country in which the port is situated to punish offenses committed by foreign merchant vessels, or crimes committed by persons on board them while lying in port.

From experience, however, it has long since been found that it is more convenient and beneficial to commerce for the local government to abstain from interfering with the internal discipline of the ship, and with the general regulation of the rights and duties of the officers and crew toward the vessel and among themselves. And so, by mutual consent or comity, it has come to be generally understood among civilized nations that all matters of discipline, and all things done on board which affect only the vessel or those on board or belonging to her, and which do not involve the peace and dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by officials of the nation to which the vessel belongs, in such manner as the laws of that country or the interests of its commerce should require; in other words, left to be dealt with by the foreign consul. But if crimes are committed on board, of a character to disturb the peace and tranquillity of the country to which the port belongs, and where the vessel is lying, the offenders have never, by comity or otherwise, been entitled to any exemption from the operation of the local laws or from punishment by the local courts, if the local courts see fit to assert their authority.

The principle which governs the whole matter is this: Disorderly conduct on board merchant vessels while lying in a foreign harbor, which only disturbs the peace of the ship, or of those on board, but which does not affect the peace

or tranquillity of the public on shore or in the port, may be dealt with by the consul of the country to which the vessel belongs; but disorders which threaten to disturb the peace of the port or the public on shore may be suppressed by the local officials, and, if need be, the offenders may be arrested, taken off the vessel, and punished by the local authorities.

Exclusive jurisdiction is given, by treaty stipulations, to United States consuls over disputes of seamen and masters relating to discipline aboard American merchant ships in the ports of France, Belgium, Austria-Hungary, Denmark, Germany, Holland, Italy, and, in fact, nearly all the commercial nations of the world except England. It is a singular circumstance that the two greatest commercial and maritime nations on the face of the earth, closely akin to each other by blood, language, literature, and laws, have never entered into any special treaty on the subject of consular jurisdiction, or consular rights and privileges. United States consuls in Great Britain and British consuls in America, therefore, can exercise no jurisdiction or authority over the vessels and crews of their respective countries, except such as has been extended by mutual courtesy.

The Government of France has always been exceedingly liberal in the matter of consular jurisdiction. I have already referred to our first consular convention with that country. By the provisions of our present consular treaty with France, consuls of both nations enjoy exclusive charge of all matters relating to the internal order of merchant vessels of their nation, and the local authorities of each are not allowed by any pretext to interfere with their differences. This gives consuls a larger power over merchant ships and their crews than is generally granted by treaty.

Our treaty with Belgium is substantially the same as that with France; and yet, strange to say, the most notable conflicts of jurisdiction in our history have arisen out of the provisions of the treaties with those countries.

It is the policy of the United States to extend as far as

possible, by law and by treaty stipulation, the most ample consular protection for American sailors in foreign ports. Consuls of the United States are regarded as in a peculiar sense the protectors and advisers of our sailors. It is their duty to receive their protests and to listen to their complaints. Our consuls are especially charged with the duty of enforcing the laws of the United States in regard to extra wages and the relief of American seamen; to furnish all shipwrecked, disabled, and discharged seamen with transportation to the United States; and to provide for all who are sick or destitute within the district of their consulate.

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✓ THE CONSULAR SYSTEMS OF THE WORLD.

Enough has been said concerning the duties and functions of consuls to show that men who are to fill such offices should not only have some special preparation for the work, but should also possess some natural aptitude for the discharge of such duties. It is now generally recognized, both in this country and in Europe, that the requirements for real usefulness in the consular service include a more advanced degree of education and a knowledge of a more special character than is thought necessary for almost any other office. There is no office the duties of which, properly performed, are more varied and difficult, and scarcely any more laborious and responsible. The duties of consuls are so entirely different from those of all other agents of government, that they demand necessarily a special education and training.

Among all the great commercial nations of the world it has come to be the accepted theory that in order to maintain an efficient consular service the officers composing it should be selected and trained with as much care as officers for the army, the navy, or the judiciary. The uniform experience of all nations has been that wherever consular officers have been carefully selected and judiciously trained, young men of the highest education and ability have

willingly entered the service and have performed the most painstaking and difficult work, on a scanty salary, so long as the hope of a permanent career and of promotion in the service for merit is held out to them. The experience of all nations shows that the highest incentives to good work in the foreign service, as in every other service, are a permanent tenure of office during good behavior, with a fixed salary, and the hope of promotion or reward for faithful and meritorious service.

Acting upon this experience, the leading nations of Europe have adopted the practice of selecting candidates for consular and diplomatic appointments from among young men of advanced education, by means of open competitive examinations, and of appointing those who thus prove themselves suitably qualified, to inferior positions in which they may have an opportunity to rise in the service by regular degrees of promotion. Favor or discrimination based upon political opinions or affiliations of the individual officers, either before or after entering the service, is virtually unknown.

The candidate for appointment is required either to pass a strict technical examination, or to produce a degree from certain prescribed universities or schools, or more frequently to qualify in both these respects. Those who are accepted are usually assigned to probationary duty in the foreign office or at a consulate, and are subjected to practical tests of some other character. Neither appointment nor promotion is made to any particular post, but to the grade. Suspensions or dismissals are known as measures of discipline only, and the superannuated officer whose service has been faithful and honorable is usually retired on a pension.

In each of the European consular systems, as in our own, there is the customary division into salaried and unsalaried classes, and into grades of consuls general, consuls, vice-consuls, and commercial and consular agents. Unlike our own service, however, vice-consuls and other

inferior officers in the service, except merchant consuls, are permanent officers, with fixed salaries. No salaried consular officer is permitted to engage in trade. Unsalaried officers are generally selected by the superior consular officer in the district, who is responsible for their acts and who virtually controls their tenure of office.

Among European governments, France is distinguished for having the oldest, and, theoretically, the most perfect consular organization in existence. The Consular Code of France was systematically formulated by Count Mazarin, with whom it was a favorite saying that he never knew a good minister who had not been a good consul, and that he never knew a good consul who was not familiar with commercial treaties and the usages and principles of commercial and maritime law. Under the French system the consular and diplomatic services are intimately connected, and the practice of training a special corps of pupils for both branches of the foreign service in the same schools is peculiar to the French system. Every candidate for examination must hold a regular commission in the army or navy, or a degree of Bachelor of Laws, Arts, or Science, from certain designated schools, or from the national military or naval academy. All examinations for positions in the foreign service, whether consular or diplomatic, are strictly competitive. The examinations for pupil consuls include international law, English and German, political economy, diplomatic history, and commercial law. Pupils whose papers are thought sufficiently creditable to warrant their going any further are then subjected to a public oral examination in commercial geography, and maritime and customs law, in addition to the subjects just mentioned. The successful competitors in this second examination then become eligible for appointment as pupil consuls and for assignment to probationary duty. Those assigned to the consular service are thereafter styled pupils, and those to the diplomatic service, attachés.

Before receiving their commissions, however, consular pupils and diplomatic attachés alike are required to serve an apprenticeship of one year in the Board of Trade, and a second year in the Foreign Office, where they are systematically drilled in all the administrative forms of the diplomatic service. They are then sent to some legation or consulate for a third year of probationary service abroad; and after that they must undergo their third and final examination, which, when successfully passed, entitles them to a commission as vice-consul. No promotion from a vice-consulate can be made until after three years of service. From this period advancement in the service depends on individual intelligence and aptitude for the work, rather than upon the length of service. Every member of the regular foreign service holds his position for life or during good behavior, and receives a life pension when honorably retired.

In addition to the foregoing safeguards, a Committee of Consultation on Consulates was created by executive decree in 1891. It consists of twenty-five members composed of distinguished members of the Senate and Chamber of Deputies, and the nine Presidents of the leading chambers of commerce of France. It is made the duty of this committee to advise the Minister of Foreign Affairs on all matters pertaining to the consular service, particularly in connection with the development and promotion of trade.

The French have always taken a special pride in their foreign service, and the fame of many of the most distinguished French families was originally laid in the consular service. Colbert, the great Minister of Louis XIV, entered the service as Consul of France, when a young man; Talleyrand, the prince of French diplomatists and the famous Prime Minister of Napoleon, and de Guignes, the renowned Oriental scholar, each began life in the consular service; the Pichons, the de Lesseps, the Beau-champs, and scores of scholars and statesmen renowned in French history, are among the honored names of the French consular service.

Talleyrand's instructions to French consuls contain these remarkable sentences: "In foreign countries Frenchmen are judged by their consuls; and consuls are judged by their intelligence and their character. When you reflect that it depends on you whether the French nation will be respected abroad, you will understand the importance and dignity of your mission.

"It is the glory of France that her consular representatives abroad have no connection with business. The commercial nations of Europe have hastened to imitate the splendid consular system of France. With England it is quite different. Every English consul is either a trader on his own account or that of his Government. He employs every method to accumulate a fortune and to increase the fisc of his isle. In Holland the English consul is a commissioner; in Constantinople he is a trader; in the ports of the Mediterranean he is a pirate."

The last sentence was probably dictated by Napoleon himself, who despised the English, and sought to cast a slur upon them by calling them "a nation of shopkeepers."

It need scarcely be said that the consular service of Great Britain is generally conceded to be among the foremost, if not the first, in the world. It is certainly the most practical and useful. For more than two centuries England has maintained the commercial supremacy of the world, no less by the wisdom of her commercial policy than by the power of her great naval armament. Her consular system is essentially the outgrowth of her commercial policy. At every nook and corner of the earth where navigation and commerce can penetrate the union jack is to be seen flying above a British consulate, and at every mart and seaport in the whole circle of the earth the British consul is found—the *avant courier* of trade,—the herald and protector of British commerce.

The British consular service was established in its present form in 1825, and has since been twice partially remodeled; the last time by the Earl of Clarendon, in 1855.

Previous to 1825 the service had many of the defects which Talleyrand so caustically pointed out. Up to that time all appointments to the British foreign service had been made by the King, as a reward to political favorites and friends, very much in the same way that appointments are made to the service in this country at present. By the act of 1825 the system was adopted of placing the consular service under the control of the Foreign Office, and of making selections and appointments by means of competitive examinations, and of taking the service entirely out of politics. Since then the consular service has been the subject of frequent investigations by Parliamentary commissions, with a view to still further improving its efficiency. The evidence taken by these commissions has been published in the British Blue Books, and is very voluminous, and includes the experience and suggestions of all the leading statesmen, consuls and Presidents of the chambers of commerce and boards of trade in Great Britain. Every one interested in the subject of consular reform should read the reports of the British commissions. They are all practically unanimous in favoring the system of competitive examinations, of fixed salaries, of a life term of office; and against the practice of employing merchant consuls.

Candidates are not required to present diplomas from universities or technical schools, as in France and Germany; they are, however, required to satisfy the commission that they have a suitable command of the English language for clear and forcible expression. They must be able to read and write French correctly and fluently. They must also understand the language of the country to which they are to be sent sufficiently to be able to communicate with the authorities. They must pass satisfactory examinations in admiralty and commercial law, the laws of shipping and navigation, of bills of exchange, maritime contracts, insurance, bailments, and bottomry. They must also pass an examination on the principles of

international law, political economy, commercial geography, and history. Although candidates are not required in express terms to possess university degrees or diplomas, the examinations on all these subjects are so exhaustive that no one who has not taken a preparatory course in economics, international law, and political history could hope to qualify.

Candidates who are accepted by the commission, before assignment to their posts of duty, are required to spend at least three months in the Foreign Office, in order to become familiar with the forms of business. The first assignment to duty is usually to some inferior post.

In the examination of vice-consuls the tests are less severe, but more diverse; the aim being to set in every case the highest standards of intelligence and general culture, coupled with special knowledge of all subjects connected with consular and diplomatic employment. Vice-consuls must in all cases serve at least two years on probation.

The English Government makes a specialty of the consular service in the Orient, in Egypt, and in all Asiatic and non-Christian countries; the object being to secure men for this branch of the service who are not only conversant with European languages, laws, and polity, but who are highly educated in Oriental languages, literature, manners, and customs. To this end appointments to the service in Eastern countries are made by competitive examinations for the position of student interpreters for consulates and legations in those countries. The policy of the Government is to educate student interpreters at the Government expense, and under the eye of old and experienced officers in the service, and to offer a permanent career to all who enter such service.

Open competitive examinations are held periodically at the Foreign Office for young men who desire to enter the Oriental service. Those who pass successfully their preliminary examination are then sent at government expense to certain designated institutions of learning, usually to

Oxford, for a special course of two years in Oriental studies. The student before entering the school must give bond to cover any loss, in case he should leave the service or be dismissed for incompetence or misconduct. On receiving his degree in Oriental literature the student is assigned by the Foreign Office to some legation or consulate in the country where he expects to serve. At the British legations at Peking, at Constantinople, and at Teheran, the capital of Persia, a corps of these student interpreters are constantly employed in subordinate positions, and from time to time, as the needs of the service require, they are assigned to different consulates.

It is well understood that the development of the commerce of Great Britain in the Orient has been due in a large measure to the excellence of her consular system, and to the trained skill of the officers composing it. The ascendancy of British trade and influence in the Far East has been attributed by competent authorities to this agency alone. The entire service is under the control of the foreign office, as in this country, with this difference, however, that the English consul can be immediately transferred from port to port, while the American consul cannot without a new appointment from the President. It is the duty of British consuls not only to familiarize themselves with ordinary routine work, but also to become conversant with any treaty stipulation, Act of Parliament, or Order in Council relating to foreign trade or to consular functions and duties, and especially with the laws and usages of trade of the country where he resides that may in any case affect the commercial interests of England. The consul's skill in mastering these subjects, and the results of the practical application of his knowledge of such matters in his official acts and relations, are all carefully scrutinized by his official superiors.

The consular service of Germany, although comparatively modern in its organization, is one of the most efficient in Europe. The service is divided into two classes,

professional and merchant consuls. Both classes are selected by the Foreign Office and appointed by the Emperor. All candidates for the professional or regular service must pass a preliminary examination in commercial and international law, and must have served at least three years in the civil service or at the bar. Before receiving a commission the candidate must also have served two years in a subordinate consular position abroad, and have passed his second or final examination.

It is well known that it is the aspiration of Germany to become the leading manufacturing and commercial nation of Europe. The government is fully alive to the importance of the consular service as an agency for the promotion of its foreign trade, and has recently, by order of the Emperor, appointed a commission, composed of the most experienced consuls in the service, to revise and reform the entire system.

In Russia a university degree or military rank takes the place generally of an examination; but original appointments are all made to the lowest grades, and advancement in the service depends upon efficiency, intelligence, and merit.

The consular systems of Belgium, Austria-Hungary, and Italy are each organized on the same general plan. Candidates for admission to the service are required, without exception, to pass a series of competitive examinations. All applicants must have had a degree of bachelor of laws from some designated university, or a certain rank conferred by the National Military Academy. Examinations are held once a year; these are widely advertised, and the examining boards are composed invariably of distinguished administrators in the civil or military service. A knowledge of French, German, and English is indispensable. Besides their diplomas, applicants are required to prove their proficiency in commercial and international law, consular and diplomatic history, and political economy. Candidates after passing successfully their first examinations are then

required to spend a year or more in the Foreign Office and to become familiar with the relations of the department to the foreign service, and all the administrative forms of business connected with the consular and diplomatic service.

In most European countries commercial museums have been founded similar to those in this country, for the exhibition of samples of products and manufactures of other nations and of the variety of home products most saleable abroad. In these institutions consular students and pupils are trained, with a view to the promotion of trade, and their success in this direction has in some instances (in Belgium, for example) attracted world-wide attention.

It has, in short, become recognized everywhere, except in the United States, that it will not do to trust the commercial interests of a great nation to officers who have not received a special course of study and training for the service.

It only requires a glance at the consular systems of the world to see that the organization and equipment of the foreign service of the United States is altogether antiquated and defective. It is plain that ours is the only great commercial nation of the world to-day where appointments to this branch of the civil service are made without special regard for personal fitness, and where candidates are eligible for appointment without a degree from some accredited university or school of diplomacy, or without special training of some sort. The United States is the only great civilized nation where appointments to the consular and diplomatic service depend upon political influence, and where the tenure of office is not permanent or during good behavior. Once appointed to a consular or diplomatic position, an American finds that, no matter what his peculiar fitness or qualifications may be, there is virtually no opportunity for advancement and no hope of adequate recognition or reward for honorable and meritorious services. As a rule, in our service there is no assurance, and really little probability that a consular or diplomatic officer,

no matter how well qualified he may be for his position, will be retained in office beyond the term of the administration which appoints him. At every change of administration, under our system, every one of these officers is liable to be removed, and they generally are removed, and for no other reason apparently than to make room for others who owe their appointment to political favor or party influence, rather than to personal fitness or special qualifications of any kind. Such a system in its very nature is incapable of developing a well ordered or efficient service; and such a service is as far removed from that of Great Britain or France as day is from night.

It is the opinion of everyone who has had experience in our foreign service that its chief defect is a lack of permanence. It is generally admitted that if appointments to the service were once made permanent, or during good behavior, there would be no difficulty in securing the very best ability for such offices.

It has been said, and it is probably true, that Congress is not likely to adopt for the diplomatic service a system of appointments for life, as such offices are essentially political in character.

It is claimed that as members of the diplomatic service occupy a peculiarly confidential relation to the administration, they should, therefore, be in political sympathy with the party in power. This argument, while it seems to have some force, is entirely overcome by the experience of other nations. No political party in France, or England, or Germany, would ever think of changing the personnel of their diplomatic corps because of a change of political parties at home. As consular duties are commercial and judicial in character, and not political, this argument is in no way applicable to them. There is no more reason for removing experienced consuls upon the change of administration than there would be for removing the president and officers of a bank or the clerks of a business house at the beginning of a new governmental administration.

Another serious defect of our consular and diplomatic system is, that we do not pay these officers sufficient salaries to enable them to live in a style becoming their rank and station. It has come to this, that nobody but a rich man can afford to accept a first-class mission or consulate abroad.

It should never be forgotten that one of the most important duties of an officer in the foreign service is hospitality. To be useful to his country, a consular or diplomatic officer must make the acquaintance of the leading officials of the country where he resides; he must receive and entertain them at his home and at his table; he must be on terms of friendly social intercourse with them, and in this way prepare himself for the occasion which may arise at any moment when he has some important end to gain. A clever minister or consul will accomplish much more at private conversations, amiable talks over a dinner table, or after it, than can be done by official dispatches. Diplomatic history is full of the most interesting and instructive illustrations of this fact.

Senator Sumner once expressed all this very well when he said that, "in order to preserve good foreign relations, it is not sufficient simply to have your representative living abroad as cheaply as he can afford to exist, because his social position is a very important factor in his power to be useful. Great facilities and great means of good understanding are best afforded by means of social intercourse, not only with the officials of the country, but with public men not in office. Your representatives, therefore, should be in such an easy position, with regard to money affairs, as to enable them to receive hospitably persons of all kinds, and I may say of all nations."

In answer to this it is sometimes said that our institutions are democratic and not monarchical; that our official equipment, etiquette, and manners should conform to our ideals of republican simplicity. This may be all very well in a sense; but it must occur to every thinking person that it is not a mere question of display; that even democracy,

in order to be successful, must at least be intelligent; that in order to obtain the respectful attention of other nations, we must first show a decent regard for their opinions, and sometimes even for their prejudices as well.

The real truth is that under all political forms human nature is the same. The true idea at the bottom of the whole matter is neither aristocratical display nor republican simplicity. It is human nature the world over to have respect for and to be influenced by good manners, good social qualities, and a high-bred and liberal hospitality. There is no country in the world where all this is better understood or more generally practiced than in the United States; and yet, strange as it may seem, as a people who understand life and human nature quite as well as any other, and at home bestow our hospitality more lavishly and in more princely fashion than any other, we send our official representatives abroad on a mean second-rate salary; and all this in the name of republican simplicity.

At home it is well enough for us to observe such manners and customs as may be best suited to our institutions; but when we send our agents to represent us abroad, let us remember, in the language of President Monroe, that "when we deprive them of the necessary means to enter the social circle to which they belong, we reduce them at once to ciphers."

With regard to the special qualifications necessary for a good consul it is really difficult to speak. Mr. Gladstone, who perhaps understood the duties and necessary qualifications of consular and diplomatic officers as thoroughly as any English statesman, declared in his testimony before the British Civil Service Commission that there is no branch of the civil service that calls for such a diversity of attainments, such a mass of practical knowledge and general information. The duties of these officers, says he, are so peculiar, so infinitely varied and so important, that they demand something more than a special education and training. From ignorance of the peculiar duties of this

class of officers, the general public in this country fails to perceive that, while in all other branches of government service great personal qualifications are *desirable*, they are absolutely *essential* in our Consular and Diplomatic Service.

There is one qualification which every officer in the foreign service should possess: he should always be able to speak the language of the country to which he is accredited, if not fluently, at least well enough to read and understand official communications addressed to him, so that he will not be compelled, as is too often the case, to take some unknown foreigner into his confidence and service to translate them. Once let it be known that a minister or consul has to employ a foreign interpreter, and his official correspondence and state secrets are at the command of anybody or any government that may deem them worth paying for.

It is almost easier to say what a consul should not be than to enumerate all that he should be. In many instances, and perhaps in the majority of cases, a consul's duties do not so much make calls for special knowledge as for unusual abilities of a common character. "To know exactly what you want," says one writer, "to see quickly what is practicable; to take everything by its right handle; never to be in a hurry; not to contradict; not to irritate; not to threaten; above all things, to remember that the person you are talking with knows his own interest fully as well as you know yours." All this is good advice, but it is almost as good in private as in official life. The difference is in the weight and magnitude of the interests concerned, rather than in their special character.

When we are told that consular duties demand a liberal education, good sense, penetration, patience, a calm judgment, an unruffled temper, a pleasant address, and agreeable manners, we are ready to say that these are things which everybody should have who has to mingle in the affairs of life; and so they are; but everybody does not need them in the same degree.

